



Office of Water Quality Wetland Water Quality Standards and 401 Certification Implementation Rulemaking

SUMMARY OF MEETING

Commissioner's Wetland Workgroup Meeting Two – August 6, 2001

The second meeting convened at 1:30pm in Room C of the Conference Center of the Indiana Government Center South in Indianapolis. Twenty-seven persons signed the attendance sheet. Workgroup members in attendance were:

Eric Fry, representing Indiana Manufacturer's Association
Sandra Wilmore, Save the Dunes Council
Tim Maloney, Hoosier Environmental Council
Tina Hissong, representing Indiana Lakes Management Society
Rick Wadja, Indiana Builders Association
John Stephens, Wabash County Surveyor, Indiana County Surveyors Association
Mark Thornburg, Farm Bureau
Bill Maudlin, Indiana Department of Natural Resources
Bill Hayden, representing Izaak Walton League
John Humes, representing Indiana Electrical Association
Tonya Galbraith, Indiana Association of Cities and Towns
Thomas McSoley, M.D.
Michaela Kendall, Indiana Department of Commerce
Travis Worl, Association of Indiana Counties

Deputy Commissioner Tim Method began the meeting by going over the set of handouts that were distributed to the workgroup prior to this meeting. There were no questions regarding the handouts. A general question was asked if IDEM had been made aware of any final policy statement by the USEPA or the Corps of Engineers regarding the Supreme Court decision on isolated waters (SWANCC v. USACOE). It was indicated that no new information had been provided by the federal agencies on this subject. The group raised no other new issues.

The discussion then moved to the new draft language to create a Surface Water Modification Permit Program (SWMPP) to regulate isolated waters in the wake of the Supreme Court decision. Workgroup members were asked to provide suggestions on language or ask questions. Following is a summary of the issues raised in this discussion:

1. It was noted that several omissions of the term "or surface water modification permit" had occurred in the draft rule. IDEM stated that these were unintentional omissions. The locations in the draft rule that will be corrected are as follows: 327 IAC 17-3-4(f), 327 IAC 17-3-5(f), 327 IAC 17-4-1(b), 327 IAC 17-4-4, and 327 IAC 17-4-14

2. It was suggested that the public notice procedures for the creation of general permits (327 IAC 17-3-7(g)) be expanded to include greater detail on the notice period, the length of the notice (a notice of forty-five days was suggested), and the opportunity to petition IDEM for a public hearing using a given number of signatures as the triggering mechanism.
3. Questions were raised regarding the scope of the proposed SWMPP. It was suggested that the program not regulate so-called "man-made wetlands" and areas considered "farmed wetlands" by the Natural Resources Conservation Service. Additionally, it was suggested that normal agricultural activities not be subject to this rule. A general question was voiced regarding the scope of the statutory definition of "waters of the state" and whether that definition includes areas that should not be regulated by this rule. It was also suggested that normal maintenance of regulated drains be exempted from this rule.
4. Workgroup members discussed the merits of regulation of "man-made wetlands". Suggestions were made to either reduce required mitigation ratios for impacts to these areas, or not regulate these types of wetlands under this rule. It was noted that not all man-made wetlands are areas of lesser worth; the example of wetlands formed in reservoirs was given. IDEM and the workgroup discussed how these areas are currently regulated, how these areas may come into existence, and how long it might take for these areas to form.
5. Workgroup members discussed regulated drains, the current regulatory requirements, and the possible effects this rule would have on these activities. It was noted that maintenance of legal drains is loosely grouped into dredging to restore grade and open tiles, as well as the clearing of vegetation and removal of obstructions such as logjams. It was noted that not all legal drains are the same; variation exists from open ditches to natural streams, all of which may be considered legal drains under the Drainage Code. It was noted that vegetation clearing and removal of obstructions would most likely not require permits under the current regulations, and would continue to be an exempt activity under the proposed SWMPP rules. Other types of projects would require permits from the Corps and IDEM under existing regulations and would be unaffected by this rule.
6. Workgroup members discussed if the proposed SWMPP rules

would cover waters other than wetlands. IDEM indicated that isolated lakes and some open water areas could be subject to this rule. This will be clarified by future guidance from the Corps and USEPA.

7. A question was raised as to whether thermal pollution caused by the removal of vegetation along ditches and streams could be regulated under this rule. Also, the general question of whether activities that could adversely affect wetlands and waters would also be regulated by the proposed SWMPP rules was raised.
8. Questions were raised as to how the Natural Resources Conservation Service (NRCS) and IDEM work together in instances where both agencies have authority over a project. IDEM indicated that both agencies work closely and coordinate on issues such as the definition of minimal effects, mitigation requirements, and mitigation plans. It was suggested that for impacts up to one acre, IDEM defer to the NRCS and its requirements, for applicants that are participants in NRCS programs. IDEM would regulate other agricultural producers, regardless of the size of the proposed impact. It was also suggested that IDEM consider the exemptions for agricultural activities listed in statutes recently passed in Wisconsin and Ohio on this subject.
9. It was suggested that IDEM needs to define or provide guidance on the following terms in the rule: fill, discharge of fill, commencement of work, mechanical clearing, and private pond. IDEM indicated that there is litigation pending on the issue of what can be considered a private pond.
10. Questions were raised regarding the definition of “applicant” used in the rule. It was suggested that this definition might place an unfair burden on certain applicants that are required to mitigate for impacts to waters regulated under this rule. Further, it was suggested that this rule may cause adverse financial impacts to persons along regulated drains and the mitigation requirements placed on county surveyors could result in a taking of property. Lastly, it was suggested that projects involving maintenance of legal drains be given reduced mitigation requirements in recognition of the limited budgets administered by county surveyors.
11. It was suggested that the wording of 17-1-3 was unclear and should be reworded to clarify when a surface water modification permit is needed.
12. A question was raised regarding the statutory definition of “waters of the state”. The definition refers to accumulations of water – does this mean that when water is not present in a wetland that the area is no longer a water of the state?

13. A question was raised regarding what activities would be regulated under the proposed SWMPP rules. It was suggested that the current language would regulate activities such as the digging and capping of groundwater wells. IDEM agreed that a clarification is needed.

At the conclusion of the meeting, IDEM agreed to evaluate the rule draft in light of the comments from this meeting and make changes. A revised draft will be distributed to the workgroup prior to the next meeting. Workgroup members were encouraged to provide written examples of language on the points discussed. It was stated that the draft wetland water quality standards would be presented to the Water Pollution Control Board along with the draft water quality certification rules and the proposed SWMPP rules. It was suggested during the meeting that IDEM provide an appeals process for areas designated as Tier II wetlands in the draft proposed wetland water quality standards.

At the adjournment of the meeting, IDEM scheduled the third meeting:

Commissioner's Workgroup Meeting Three
September 6, 2001 – 1:30pm to 4:00pm (Indianapolis Time)
Indiana Government Center South – Conference Room 4-5
Indianapolis, Indiana

Information related to this meeting, as well as copies of all handouts, attachments, and other materials will be available on IDEM's website at the following address:

<http://www.IN.gov/idem/water/planbr/401/wetlandwg.html>

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